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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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7590 08/01/2007				
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		EXAMINER		
		EBRAHIM, NABILA G		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/725,856	Applicant(s) YU ET AL.	
	Examiner Nabila G. Ebrahim	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
 4a) Of the above claim(s) 15-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 37 and 38 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: ____ |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :05/09/2005, 12/27/2004, and 12/02/2003.

DETAILED ACTION

The receipt of Information Disclosure Statements dated 05/09/2005, 12/27/2004, and 12/02/2003 is acknowledged.

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 1-14, 37, and 38 in the reply filed on 5/10/07 is acknowledged.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites "from about 0.1% up to just below the toxic level of phenylalanine." The claim is not clear regarding the highest point of the range since the toxic level is not recited and claims included different animals where the toxic level may be different from one animal to the other. For the purpose of expediting examining the claim, any amount disclosed in the prior art which is a food for a kind of an animal recited in the claims will be considered below the toxic level of phenylalanine and will read on the claim requirement.

Claim 5 is further rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites an amount of 7% to about 70% by

weight of protein, the range is not clear as if it includes or excludes the amounts of the amino acids tyrosine and phenylalanine recited in the same claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 10-12 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Morris et al. US publication 20010014442 (Morris).

Morris teaches consumable product utilized to maintain and restore hair color comprises a substrate and an effective amount of a directly available amino acid (in pure or diluted form) wherein the directly available amino acid is selected from the group consisting of tyrosine, phenylalanine and mixtures thereof (abstract). The effective amount of directly available tyrosine may be at least approximately 0.05% by weight of the diet [0019]. Also adding an effective amount (e.g., at least approximately 0.05% by weight, or at least approximately 0.1% by weight) of a directly available amino acid selected from the group consisting of tyrosine, phenylalanine and mixtures thereof or to an animal consumable product having indirectly available amino acids therein to produce a supplemented consumable [0021], it is noted that the range disclosed by Morris is overlapping with range required in instant claims 1-3. The composition is provided to animals such as e.g., a cat, a dog, or mink, etc. [0026]. The food can be

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gelatin based [0030, 0037, 0038, and 0041]. Morris also discloses that milk contains proteins supplying adequate amounts of phenylalanine and tyrosine for melanin synthesis [0047]. The animal food can be in a dry matter [0036, 0047].

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-14, 37, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris et al. US publication 20010014442 (Morris) in view of Gerth et al US 5925377 (Gerth) and further in view of Nagaoka Satoshi et al., Effects of excess dietary tyrosine on cholesterol, bile acid metabolism and mixed-function oxidase system in rats, J Nutr. 1990 Oct;120(10):1134-9.

Morris has been discussed above.

The reference discloses the use of fat, cellulose (fibers), carbohydrate (sucrose and starch), and protein in the animal food [abstract, and table 3]. Morris did not disclose the amounts recited in claims 5 and 9; however, animal foods ingredients such as proteins, carbohydrates, fats, and dietary fibers are conventional ingredients that are known to be used in many different amounts and ranges. Furthermore, once a method of using an ingredient is known it is within the skill of the skilled artisan to determine the optimum amounts to use and the optimum end points in using the ingredient.

Morris is deficient in disclosing the use of the composition for weight loss and also the improvement of the method of use by reducing the amount of tyrosine.

Gerth teaches that a dietary supplement composition wherein DL-phenylalanine is combined with tyrosine to act as an appetite depressant (abstract).

It would have been obvious to one of ordinary skill in the art to combine the disclosures of Morris and Gerth to control the obesity problems in animals/humans.

Both references do not disclose a reason of why the skilled artisan would be motivated to lower the amount of tyrosine.

Satoshi teaches that the excess dietary tyrosine causes hypercholesterolemia and affects bile acid metabolism and mixed-function oxidase system (title and abstract). The reference does not specify that the amount of tyrosine used should not exceed the ranges recited in the instant claims. However, the amount of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of tyrosine in order to best achieve the desired results.

Accordingly, it would have been obvious to one of ordinary skill in the art to reduce the amount of tyrosine used by Gerth to the least amount that may be useful to control appetite and assists in weight loss in animals and reduce any side-effects that may result from the use of higher tyrosine. The expected results would be a composition that includes tyrosine in a least amount that may cause appetite suppression as the overlapping amount disclosed by Morris, phenylalanine, carbohydrate, protein, fat, and dietary fibers. The skilled artisan would be motivated to lower the amount disclosed by Gerth because of the research disclosed by Satoshi that excess amount of tyrosine would increase blood cholesterol. The skilled artisan would have expectation of success of having a dietary supplement comprising tyrosine that reduces weight and is improved to include less amounts of tyrosine.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nabila G. Ebrahim whose telephone number is 571-272-8151. The examiner can normally be reached on 8:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nabila Ebrahim
7/19/07


MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER